

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3180 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

JASHVANTSINH R PARMAR

Appearance:

MR HARDIK C RAWAL for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/10/1999

ORAL JUDGEMENT

Learned advocate Mr. Raval is appearing for the petitioner corporation. Learned advocate for the respondent is present.

The facts of the present case, in short, are that the respondent was working as driver in the bus plying from Rustompura to Nyaya Mandir. It was found that the bus collided with the truck causing injury to the passengers and that amongst the injured, three had subsequently died. Regular departmental inquiry was initiated against the respondent and at the end of the departmental inquiry, the respondent was found to be guilty of rash and negligent driving and it was found that while crossing National Highway No. 8, care and caution ought to have been taken which was not taken by the workman. The respondent was also prosecuted for the said charge before the criminal court and he was acquitted by the criminal court by judgment dated 7th June, 1983. However, at the end of the departmental inquiry, the disciplinary authority, under its order dated 16th April, 1982, dismissed the respondent workman from service. Said order of dismissal was challenged by the respondent workman before the labour court by filing reference No. 599 of 1983.

Before the labour court, statement of claim was filed by the respondent workman and reply thereto was also filed by the petitioner corporation and it was pointed out by the respondent in his statement of claim that instead of coming from the left side, the opposite side truck had come from the right side and that is how the incident had taken place. According to the respondent workman, he was not at all negligent or rash in driving the vehicle involved in accident; the break was not properly working and, therefore, the accident took place. It was pointed out by the petitioner corporation before the labour court in its written statement that there was negligence on the part of the respondent workman and because of his negligence, the accident had taken place and the bus was damaged to the tune of about Rs. 50,000/-. Similarly, the truck was also damaged to the tune of Rs. 50,000/-. The respondent had not taken sufficient care in crossing the Four Line Roads and the incident had taken place for want of proper care and caution.

Before the labour court, the respondent workman has not challenged the legality, validity and propriety of the departmental inquiry. The respondent workman was examined at Exh. 17 and the petitioner corporation has not led any oral evidence before the labour court. The respondent workman has relied upon the decision given by the criminal court and has produced the same at Exh. 13. The labour court, after appreciating the evidence led and produced before it, has noted that no eye witness

was examined during the course of departmental inquiry and mere reporter was examined who was not an eye witness. The labour court, after considering the facts and circumstances of the case and the decision of the criminal court in particular, came to the conclusion that the dismissal order is required to be quashed and set aside by directing the petitioner corporation to reinstate the respondent workman in service with continuity of service, with 50% of the back wages. The labour court has considered that in past, the respondent has not committed any such incident. The respondent workman has admitted during the course of his oral evidence that he was doing some labour work in GIDC and, therefore, the labour court has drawn inference that the respondent workman cannot be presumed to have remained unemployed for the whole intervening period, being a driver and, therefore, keeping in view his admission that he was doing some petty labour work, the labour court inclined to grant full back wages and directed the petitioner corporation to reinstate the respondent workman in service with 50 per cent of the back wages for the intervening period. Said judgment and award has been challenged by the petitioner corporation before this court by filing this petition.

This Court, while admitting this petition, has granted ad interim relief subject to the provisions of section 17B of the Industrial Disputes Act, 1947.

Mr. Raval has submitted that it was a serious accident committed by the respondent-workman wherein three persons have died and 29 persons have received serious injuries. He has submitted that in view of the seriousness of the accident, the Labour Court has committed gross error in coming to the conclusion that no eye witness was examined and only reporter was examined and therefore the punishment imposed was harsh and unjustified. Such conclusion is not legal and valid conclusion and therefore the award of the Labour Court is liable to be quashed and set aside. On the other hand, the Learned Advocate appearing for the respondent workman has pointed out that it is for the petitioner Corporation to prove misconduct of rash and negligent driving on the part of the respondent workman and for that the petitioner Corporation is required to examine eye witness. However, during the course of the departmental inquiry, only the reporter was examined who was admittedly not an eye witness to the incident and therefore the Labour Court has rightly come to the conclusion that the punishment is harsh and unjustified and the same does not require any interference by this

Court.

I have considered the submissions made by both the advocates. I have also perused the impugned judgement and award. I am of the opinion that the workman has admitted the gainful employment vide Exh.17. He has admitted that he was doing some labour work in G.I.D.C and his driving licence was also renewed from time to time during the intervening period and therefore it would be the natural presumption or inference that he must have done some work during the intervening period. In view of these facts, I am of the opinion that the back wages granted by the Labour Court are required to be reduced to 25% because of the admission of the workman and therefore considering the evidence of the respondent workman, I am of the opinion that instead of 50% backwages as has been granted by the Labour Court, the respondent workman should be granted only 25% of the backwages. Rest of the award of the Labour Court should not be interfered by this Court. To that extent the award is required to be modified. I therefore pass the following order:-

ORDER

The petition is partly allowed. The award of the Labour Court shall stand modified qua back wages. Instead of 50% of the back wages, the petitioner Corporation shall pay 25% of the back wages to the respondent for the intervening period from the date of dismissal till the date of award within three months from the date of receipt of certified copy of this order. Rule is made absolute accordingly, with no order as to costs.

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